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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,515	08/19/2003	John Russell	11306-116002	4506
26191	7590	08/19/2005		
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER FAISON, VERONICA F	
			ART UNIT	PAPER NUMBER
			1755	

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,515

Applicant(s)

RUSSELL ET AL.

Examiner

Veronica F. Faison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5-11-05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 38-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 and 38 is/are allowed.
- 6) ☒ Claim(s) 1, 39-42, 44, 47, 51, 52, 57, 59, 60 is/are rejected.
- 7) ☒ Claim(s) 43, 45, 46, 48-50, 53-56 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The indicated allowability of claims 39-60 are withdrawn in view of the newly discovered reference(s) to Nendl et al, Hoy, and Quinlivan. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 39, 42, 44, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nendl et al (US Patent 4,946,696) in view of Osada et al (US Patent 5,070,230).

Nendl et al teach a cocoa butter composition that is to be used with edible substrates, which is screen printed by most present day screen printing (col. 6 lines 35-51). The reference further teaches that the pattern material comprises a substantial portion of cocoa butter admixed with selected coloring materials, opacifiers, flavoring materials and fillers (col. 3 lines 59-62 and col. 7 lines 11-31). The reference fails to teach the viscosity of the composition.

Osada et al teach the viscosity of a screen printable composition is within the range of 1,000 to 20,000 centipoise (col. 4 lines 42-45).

Therefore it would have been obvious to one of ordinary skill in the art for the composition of Nendl et al to have the viscosity taught by Osada et al because, Nendl et

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al teaches that most present day screen printing may be used which would have obviously have the viscosity set forth by Osada et al absence tangible evidence to the contrary.

Claims 1, 39-42, 44, 47, 51, 52, 57, 59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoy (US Patent 6,063,412) in view of Osada et al (US Patent 5,070,230).

Hoy teaches an edible greeting card for ingestion (abstract). The reference further teaches that an edible ink wherein the colorant was a nontoxic coloring agent. The ink composition may be printed with a variety of printing techniques that included silk screening, lithography, laser imprinting and embossing (col. 4 lines 55-65). The reference further teaches that the edible food decoration typically comprises ingredients including corn starch, corn syrup, sugar and glycerine (col. 5 line 2-5). The reference fails to teach the viscosity of the composition.

Osada et al teach the viscosity of a screen printable composition is within the range of 1,000 to 20,000 centipoise (col. 4 lines 42-45).

Claims 1, 39-42, 44, 47, 51, 52, 57, 59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quinlivan (US Patent 4,285,978).

Quinlivan teaches an ink composition that is edible. The ink composition has a consistency and color density similar to that of ordinary printers' ink, but which is edible. The ink or a number of different colored version that may be applied to transfer medium, in any desired pattern by hand painting or by any one of a number of commercial embodiment, a conventional "four color run" lithographic process might be employed to

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make the transfers by printing a desired pattern on a suitable transfer medium (col. 3 lines 1-46). Therefore it would have been obvious to one of ordinary skill in the art that the ink composition would have the viscosity set as forth by Applicant, because the ink composition are used in the same apparatus absence evidence to the contrary.

Allowable Subject Matter

Claims 2 and 38 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

1. The Examiner is relying upon Applicant's arguments for the patentability of the instant claims, specifically Applicant's argument that Ahn teaches viscosity of the liquefied sugar component should be 50-90 Brix, however the 90 Brix solution has a viscosity of less than about 20 cp using the test method described in the application, even when the 90 Brix sugar solution was combined with maximum suggested concentration of TiO₂, the viscosity of the ink base was only about 500 cp was found persuasive and therefore the rejection of the claims has been withdrawn.
2. an edible ink composition comprising a pigment density of about 0.1 g/l to about 0.25 g/l and an ink density of about 1.1 g/l to about 2.0 g/l.

Claims 43, 45, 46, 48-50, 53-56 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The references alone or in combination fail to teach ink composition comprising the specific components set forth in claims 45, 46, 50, 53-56 and a master which is a photopolymer plate.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

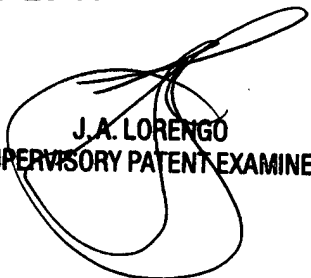
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Veronica F. Faison whose telephone number is 571-272-1366. The examiner can normally be reached on Monday-Thursday and alternate Fridays 8 am to 5 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VFF
7-25-05


J.A. LORENGO
SUPERVISORY PATENT EXAMINER